

**STATEMENT AND FINDINGS OF ESSEX DISTRICT ATTORNEY
JONATHAN W. BLODGETT REGARDING OFFICER INVOLVED FATAL
SHOOTING ON JULY 22, 2012 AT LYNN, MASSACHUSETTS**

The Essex District Attorney's Office and the Massachusetts State Police assigned to the Essex District Attorney's Office have concluded its investigation into the facts of a police involved fatal shooting that occurred July 22, 2012 in the area of Chatham and Ingalls Streets in Lynn. The District Attorney, as mandated by Massachusetts law, investigates all unattended deaths and homicides. The investigation into the fatal shooting of Brandon Payne (DOB: 9/6/88 of 95 Woodman Street, Lynn) by on-duty officers included interviews with witnesses at the scene, interviews of the responding Lynn and Massachusetts State Police officers and FBI agents, ballistics examination of evidence found at scene, review of surveillance evidence, and analysis of radio transmissions, police reports, witness statements and crime scene photographs.

That investigation revealed the following facts:

On July 21, 2012, Lynn and State Police were assigned to and assisting in a federal investigation involving federal court ordered wiretap warrants. Shortly after 6 p.m., Lynn Police stopped a white Chevy bearing a Nevada registration for a motor vehicle violation at Boston and New Park Streets, Lynn. The operator of the vehicle was Sincere Lawson, 23, of East Orange, New Jersey. When it was verified that Lawson was not licensed, he was arrested for Operating a Vehicle without a License. Also in the vehicle with Lawson were Shaquina Thomas of Irvington, New Jersey in the front passenger seat and Brandon Payne in the rear passenger seat. During the stop, the officers detected a strong odor of fresh marijuana that resulted in the seizure of a bag of marijuana being held by Payne. The bag was found to contain approximately eight (8) ounces of marijuana. Payne was summonsed to Lynn District Court for Possession of Marijuana Greater than an Ounce.

On July 22, 2012 police received information from the wiretap, in real time, that Payne was upset about losing the marijuana that had been seized the day before and that he intended on committing an armed home invasion in which narcotics and cash would be taken. Surveillance was conducted on Payne and his associates throughout the day and into the evening hours. Additional information was received that several locations were selected as possible targets for the home invasion and that it was very likely to be violent. Eventually, Payne selected a target for the home invasion, 17 Highland Avenue, Lynn, the residence of a Crip's gang member and a rival of Payne's Mob-213 gang.

In the early evening hours, surveillance observed significant activity in the area of Payne's residence at 95 Woodman Street, Lynn, and several of his associates were present. At approximately 9 p.m., Payne was observed leaving his residence in the white Chevy followed by a green Honda Accord bearing Massachusetts registration. The vehicles stopped briefly at a West Lynn address and then went to Ridgeway Street. Five males exited both vehicles on

Ridgeway Street and it was believed that the plan for the home invasion had gone operational. Ridgeway Street is in close proximity to 17 Highland Avenue.

Surveillance of the vehicles observed five males exit both vehicles and stand nearby. One of these subjects was holding an object wrapped up in some sort of cloth which was believed to be a shotgun. After a few minutes, the subject who had been carrying the suspected firearm went to a yard nearby and emerged without the object. A few minutes later, this subject went back to the yard and was now walking with a noticeable limp. It was suspected that he secreted the firearm down the leg of his pants. A few minutes after this, the subjects re-entered the two vehicles and drove away from the area.

Based on these observations, along with the information that the plan to conduct an armed home invasion had gone operational, a decision was made that officers had probable cause to stop the vehicles on Ingalls Street in order to prevent a serious crime from being committed. Of paramount concern was public safety and the well-being of innocent bystanders. Further, based on the observation of a firearm involved and the likelihood of other firearms also being present, it was determined that sufficient personnel would be deployed to conduct the stop to prevent the targets from harming anyone.

Lt. Peter Holey of the Lynn Police Department's Special Investigations Unit proceeded in an unmarked unit out of Alice Avenue in front of the two target vehicles as they proceeded on Ingalls Street. Lt. Holey stopped at the stop sign at Chatham Street and remained there with the two target vehicles behind him.

The unmarked unit moved to the left to allow a Lynn Police cruiser driven by Lynn Police Officer Paul Holey to enter Ingalls Street. The cruiser illuminated its overhead blue lights to signal the target vehicles to stop. This action blocked the remaining access to Chatham Street from Ingalls Street by the target vehicles, essentially boxing them in.

Lynn Officers Paul Wonoski and Paul Holey then exited the cruiser and began shouting, "Don't move, don't move"! to the occupants of the target vehicles while walking toward them. Officer Wonoski had a patrol rifle pointed at the vehicles and Officer Holey had his duty firearm pointed at the vehicles. Officer Holey approached from the side of the street closest to the odd numbered side of the street.

The occupants of the vehicle failed to comply with their orders. Officer Holey got within approximately twenty feet of the white Chevy when it began accelerating in reverse, squealing its tires. At this time he was in fear that the vehicle would strike other law enforcement personnel positioned in the path of the Chevy. He fired his duty weapon one time at the Chevy and believes he struck the passenger side windshield of the vehicle.

At the same time, Detective Robert Avery of the Lynn Police Gang Unit was operating an unmarked vehicle and was involved in the surveillance and plan to stop the target vehicles. His passenger was Trooper Michael Forni of the Massachusetts State Police Violent Fugitive Apprehension Section, who was also assigned to the operation. Detective Avery's vehicle took up a position behind the green Honda as the target vehicles proceeded onto Ingalls Street.

Detective Avery exited his vehicle when the white Chevy suddenly accelerated in reverse with its tires screeching. The white Chevy passed the green Honda and collided violently with his vehicle. He then ran from the path of the vehicle onto the sidewalk on the even numbered side of Ingalls Street. He took up a position directly opposite the white Chevy's door. He had his duty weapon drawn and was continuously giving orders to the operator to "shut the car off, show me your hands". Instead, while lodged against his vehicle the white Chevy continued accelerating in reverse so much so its tires spun. Detective Avery became concerned that the vehicle could possibly push his vehicle out of his way and continue in reverse on Ingalls Street into the path of other units or could possibly escape.

He also observed Officer Holey approaching the white Chevy on foot from Chatham Street and was concerned that the vehicle could possibly accelerate forward into Officer Holey. Detective Avery heard a gunshot that he later stated did not know where it came from and suspected that it could have come from one of the target vehicles. At this time, Detective Avery discharged his duty weapon three (3) times. After doing this, the Chevy stopped accelerating and the occupants surrendered. The operator was Brandon Payne. He had suffered gunshot wounds to his left side torso and left elbow.

Trooper Forni, the passenger in Detective Avery's vehicle, exited the vehicle as the other end of the street was blocked and the target suspects were ordered from the vehicle. He was positioned on the sidewalk on the odd numbered side of Ingalls Street when the white Chevy accelerated in reverse at a high rate of speed, collided with Detective Avery's vehicle, and continued accelerating. He was in fear that the vehicle would strike Detective Avery or other officers present. He then fired his duty weapon two times into the rear window of the white Chevy.

Meanwhile, Detective Withrow was in plain clothes and in a marked unit to assist other personnel as part of the overall operation. Detective Richard Fucci was a passenger in Detective Withrow's vehicle. He was in plain clothes. As the target vehicles stopped on Ingalls Street, Detective Withrow took up position behind Detective Avery's vehicle with his vehicle's overhead blue lights illuminated. He then began to exit his vehicle when the white Chevy accelerated in reverse at a high rate of speed and collided with Detective Avery's vehicle. The force of the collision pushed Detective Avery's vehicle into his vehicle. When this occurred, Detective Withrow was struck by Detective Avery's vehicle, knocking him into an adjacent

parked car. Detective Withrow was knocked off balance but was subsequently able to take up a position near the driver's side rear of the Chevy. The Chevy continued to accelerate in reverse squealing and spinning its tires. Fearing that the vehicle would disengage from Detective Avery's vehicle and endanger officers by continuing in reverse or accelerate forward, he discharged his duty weapon one time into the rear driver's side of the white Chevy.

Detective Fucci exited Detective Withrow's vehicle as the target vehicles were stopped on Ingalls Street. He approached the green Honda and observed a subject exit a passenger side window of the vehicle and attempt to run. This subject was subdued and identified as Khyron Jolley, 28, no known address. The operator of the green Honda was also subdued and identified as James Finley, 34, of 6 Breed Square, #1 in Lynn and the owner of the vehicle. At this time, a weapon believed to be a shotgun was observed on the floor of the green Honda. Both Jolley and Finley were arrested for firearms charges.

When the white Chevy was finally stopped, the front seat passenger was detained and was identified as Sincere Lawson. Officers observed a revolver handgun on the driver's side rear floor of the white Chevy. Lawson was taken into custody on firearms charges.

Lawson was subsequently interviewed and stated that he had driven to Lynn from New Jersey on July 21st with his girlfriend and Payne. He stated that he intended on returning to New Jersey on the evening of July 22nd in the white Chevy that had been rented by his mother. He stated that on July 22nd, Payne asked him to take a ride and he agreed. He stated that Payne drove the white Chevy and the green Honda followed containing Finley, Jolley, and David Rucker, 23 of Lynn. Lawson stated that the vehicles made a brief stop at an address that was possibly Finley's residence.

Lawson stated that the vehicles continued until they came to a stop in another area of Lynn determined to be Ridgeway Street. He stated that all parties exited the vehicles. Lawson stated that he observed Rucker carrying an item wrapped in a cloth and could see the barrel of a firearm protruding. He stated that he did not know what their destination or activity would be. He stated that he then observed Payne and Rucker arguing and realized that they were discussing the commission of a home invasion. Lawson stated that he did not know the exact location of the crime, but believed that they were in the area of the address when Rucker began stating that he did not want to go forward with the plan due to too many people in the area. He stated that Rucker and Payne began arguing briefly about Rucker backing out of the plan and he stated that he and Payne got back into the white Chevy and Finley and Jolley got back into the green Honda. He stated that he was unsure if Rucker got back into the vehicle.

Lawson stated that the two vehicles proceeded away from the address and were on a nearby street when a vehicle pulled out from a side-street in front of their vehicle. Lawson stated

that Payne stated that he believed that this was a police vehicle. He stated that a marked police vehicle then pulled onto the street blocking their path.

Lawson stated that Payne stopped the vehicle as their path was blocked and Payne then sunk down in the driver's seat. He stated that Payne then lifted his shirt and removed a revolver firearm from his waistband. Lawson stated that Payne then handed him the firearm and said "take this". Not wanting to have possession of the firearm, Lawson stated that he tossed the firearm onto the rear seat of the vehicle on the driver's side.

Lawson stated that Payne then propelled their vehicle in reverse and they collided with another vehicle. He stated that he heard gunshots and dove for the floor of the vehicle and then surrendered.

Payne was pronounced deceased at Mass General at 5:15 a.m. the next morning. An autopsy was performed later in the day. He was found to have gunshot wounds to the torso and upper extremity with injuries to the liver, major blood vessel, gastrointestinal tract and spine.

Search warrants were executed on the vehicles. A fully loaded .357 Magnum caliber revolver, was removed from the Chevy and a loaded 12 gauge pump action shotgun was removed from the Honda. A further search of the Honda led to the recovery of third firearm, a loaded 9 mm semi-automatic pistol from the front passenger seat of the vehicle.

Based upon these facts and applying the case law pertaining to the use of force to defend oneself or another, it is determined that Payne's plan of an armed home invasion and robbery was operational and therefore he posed an immediate danger of killing or seriously injuring others. Further, the officers who were attempting to prevent that home invasion were in imminent danger of being run down by the Payne vehicle. These facts support the conclusion that the officers were justified in their use of deadly force in order to save themselves and possibly others from serious harm or even death.